DEATH BY WRONGFUL ACT — STATUTORY LIABILITY IN GENERAL — SUIT BY FOREIGN ADMINISTRATOR. — An administrator appointed in New Jersey sued in a New York court under a statute of the latter state allowing recovery for death by wrongful act where the deceased leaves a husband or wife or next of kin. *Held*, that the administrator cannot sue without taking out ancillary letters of administration. *Cornell* v. *Ward*, 168 Fed. 51 (C. C. A., Second Circ.).

It is well settled that apart from statute an administrator or executor appointed in one state has no authority to sue in another. *Willard* v. *Hammond*, 21 N. H. 382. One reason for the rule is that the letters of administration have no extra-territorial force. See *Vaughn* v. *Barret*, 5 Vt. 333. But the policy of the rule is to protect foreign creditors of the deceased. See *Terrell* v. *Crane*, 55 Tex. 81. Thus where the claim cannot be made the subject of local administration, a foreign representative may sue. *Purple* v. *Whithed*, 49 Vt. 187. Under statutes similar to that in the principal case, the judgment recovered is not subject to the claims of creditors. *O'Connor* v. *Root*, 130 Ia. 553. And it is generally held that the foreign administrator may sue without having taken out ancillary letters, since he acts, not in his representative capacity, but as trustee for the beneficiaries. *Boulden* v. *Pennsylvania Railroad Co.*, 205 Pa. St. 264. This view, opposed to that of the principal case, seems clearly correct. But if the action under the statute is for the benefit of the estate, the foreign representative cannot sue. *Maysville St. Ry. & Transfer Co.* v. *Marvin*, 59 Fed. 91.

DOWER — ASSIGNMENT OF DOWER — TIME AS OF WHICH VALUE IS COMPUTED. — An owner of land died intestate in 1885; in 1907 the plaintiff, his widow, commenced action for assignment of dower. In the meantime the property had risen in value. *Held*, that the plaintiff is entitled to have land set off to her equal in value to one third of the whole at the time of assignment. *Williams* v. *Thomas*, [1909] 1 Ch. 713. See NOTES, p. 53.

EMINENT DOMAIN — COMPENSATION — INTEREST ON AWARD PENDING APPEAL. — The plaintiff condemnor deposited the amount of the award at the defendant's disposal, and entered into possession of the condemned property. On appeal, the amount of the award was increased. The defendant demanded interest on the entire amount from the date of the first award. *Held*, that interest runs only on the excess of the second over the first award. *Matter of Water Commissioners of White Plains*, 195 N. Y. 502.

A condemnee ought at no time to be deprived of both property and compensation. Interest is the compensation allowed when he has lost his property and cannot yet get his money. Thus an increased verdict should bear interest on the whole amount from the date of the original award, if payment is delayed until final judgment. *Warren* v. *St. Paul, etc., Railroad Co.*, 21 Minn. 424. The same is true if a deposit is made, or security given, which is not at the condemnee's disposal. *Sioux City, etc., Railroad Co.* v. *Brown*, 13 Neb. 317. In both these cases there is an interval during which the condemnor holds the property and the condemnee is without compensation. If, however, the amount of the original award is at the condemnee's disposal, it is his own fault if the sum lies idle, and interest should run only on the excess. *St. Louis, etc., Ry. Co.* v. *Fowler*, 113 Mo. 458, 473. *Contra, Neilson* v. *C. & N. W. Ry. Co.*, 91 Wis. 557. This rule protects both parties, giving the condemnee fair compensation, but permitting no profit from prolonged litigation.

EVIDENCE — PROOF OF FOREIGN LAW — APPLICATION OF LEX FORI. — The plaintiff brought an action to recover for personal injuries suffered in Cuba, through the defendant's negligence. *Held*, that in absence of proof of Cuban law, the law of the forum will be applied. *Cuba R. Co.* v. *Crosby*, 170 Fed. 369 (C. C. A., Third Circ.).

The court decides the case according to the common law of the forum, without

taking judicial notice of, or making any presumption in regard to, the foreign law. To attain a similar result, courts have, in absence of proof of foreign law, presumed it to be the same as the *lex fori*. *Linton* v. *Moorehead*, 209 Pa. St. 646. This presumption may well be applied to jurisdictions like England and those American states which have always been under an English system of law. See *Norris* v. *Harris*, 15 Cal. 226. But it cannot logically be applied to such foreign countries as France or Turkey, since it is judicially known that the common law is not there in force. *Re Hall*, 61 N. Y. App. Div. 266. See *Aslanian* v. *Dostumian*, 174 Mass. 328. But a recent case shows a somewhat far-fetched refinement. A Missouri court refused to presume that the common law existed in Kansas, on the theory that Kansas was not carved out of English territory, but was acquired from France. See *Mathieson* v. *St. Louis & S. F. Ry. Co.*, 118 S. W. 9 (Mo.). The rule laid down by the principal case is simple and capable of universal application, but it overlooks the fact that the defendant's liability depends entirely upon Cuban law. *Slater* v. *Mexican National R. R. Co.*, 194 U. S. 120. The plaintiff, not having established this liability, has made out no case. For a further discussion of this subject, see 19 HARV. L. REV. 401–417.

HOMESTEAD — CONTRACT TO CONVEY SIGNED BY HUSBAND ALONE. — The defendant's wife refused to join in a conveyance of the homestead pursuant to a contract entered into by the defendant but not signed by herself. The defendant then refused to convey his interest. By the constitution of Michigan deeds of homesteads not signed by the wife are void. *Held*, that the defendant is not liable in an action at law for breach of contract. *Lawrence* v. *Vin Kemulder*, 122 N. W. 88 (Mich.).

Specific performance manifestly cannot be had against a husband who is incapable alone of making a valid conveyance. *Mundy* v. *Shellaberger*, 153 Fed. 219. But inability to perform is not of itself an excuse for a breach of contract. Thus a person who obligates himself to convey land over which he has not the power of disposal, is ordinarily answerable in damages. *Carr* v. *Dooley*, 19 N. Y. Misc. 553. And a husband who covenants to give perfect title and is prevented from so doing by his wife's dower right, is liable upon his covenant. *Drake* v. *Baker*, 34 N. J. L. 358. The principal case can be supported only on the ground of public policy. The argument is that the liability of the husband upon his contract operates to coerce the wife to sign the deed against her better judgment. *Weitzner* v. *Thingstad*, 55 Minn. 244. But ordinarily, freedom from liability would be used by the husband simply as a means of escape from an unprofitable bargain. Hence it seems wiser to make no exception to the usual rule of contracts. *Eberling* v. *Deutscher Verein*, 72 Tex. 339.

INSURANCE — INSURABLE INTEREST — WHAT CONSTITUTES INSURABLE INTEREST IN A LIFE. — *Held*, that the relation of husband and wife *per se* gives to the husband an insurable interest in the life of the wife. *Griffiths* v. *Fleming*, 100 L. T. R. 765 (Eng., Ct. App., Mch. 2, 1909). See NOTES, p. 57.

INSURANCE — INSURABLE INTEREST — WHETHER NECESSARY IN ASSIGNEE OF LIFE POLICY. — X took out a policy of insurance on his own life. Later, he assigned it to Y, who had no insurable interest in life of the assured. On the death of X the insurer paid the money due into court and filed a bill of interpleader against Y and X's administrators. *Held*, that the assignee can recover only what he actually paid for the assignment and as premiums. *Russell* v. *Grigsby*, 168 Fed. 577 (C. C. A., Sixth Circ.).

A distinct conflict of authority exists as to the validity of an assignment of a life policy to one having no insurable interest in the life. Most jurisdictions hold that such a policy, valid in its inception, is merely a chose in action which modern commercial needs require to be freely assignable as such. *St. John* v. *American Mutual Life Insurance Co.*, 13 N. Y. 31; *Gordon* v. *Ware National Bank*, 132